



KATHY HOCHUL
GOVERNOR

HOUTAN MOAVENI
EXECUTIVE DIRECTOR

April 17, 2024

Patrick McCarthy
Senior Director, Environmental & Permitting
pmccarthy@cordeliopower.com

RE: Permit Application No. 23-00054 - NOTICE OF REVISED DETERMINATION OF OCCUPIED HABITAT, INCIDENTAL TAKE AND NET CONSERVATION BENEFIT - Executive Law § 94-c Permit Application of Flat Creek Solar NY LLC for the proposed Flat Creek Solar Facility, located in the Towns of Root and Canajoharie, Montgomery County, New York (300 MW Solar Facility)

Dear Patrick McCarthy:

On April 4, 2024, the Office of Renewable Energy Siting (the Office or ORES) issued its initial Determination of Occupied Habitat, Incidental Take and Net Conservation Benefit (Initial Determination) for the proposed Flat Creek Solar Facility (Facility), pursuant to 19 NYCRR § 900-1.3(g)(7), which contained material errors.

Accordingly, attached please find the Office's revised Determination of Occupied Habitat, Incidental Take and Net Conservation Benefit (Revised Determination) to correct the original determination. The Office will publish the Revised Determination on its website through the ORES Permit Application Portal.

**Flat Creek Solar Project
Towns of Root and Canajoharie, Montgomery County
Permit Application No. 23-00054**

**Determination of Occupied Habitat, Incidental Take, and Net Conservation Benefit
April 17, 2024**

Wildlife Site Characterization

In compliance with 19 NYCRR § 900-1.3(g)(2), Flat Creek Solar NY LLC (Applicant) provided a draft Wildlife Site Characterization Report for the proposed Flat Creek Solar Project, located in the Towns of Root and Canajoharie, Montgomery County, New York dated April 2022. This report, together with the avian surveys referenced below, have been provided to the Office of Renewable Energy Siting (the Office or ORES) and the New York State Department of Environmental Conservation (NYSDEC), in connection with the Applicant's pending facility siting application pursuant to Executive Law §94-c and 19 NYCRR Part 900.

Avian Surveys

The Applicant provided a Breeding Bird Survey Report dated August 2022, Winter Grassland Raptor Survey Report dated May 2022, and a Winter Grassland Raptor Survey Report dated May 2021. The Applicant completed the associated breeding bird surveys for the project site from May 3 through July 15, 2022. The Applicant completed the associated winter grassland raptor surveys from November 15, 2021 through April 13, 2022 and November 16, 2020 through April 15, 2021.

Determination

Pursuant to §900-1.3(g)(7), the Office has completed a review of this information and hereby provides its "draft determination regarding whether occupied habitat for one or more New York State (NYS) threatened or endangered species exists within the facility site, the boundary of the occupied habitat, whether de minimis levels as provided in § 900-2.13 . . . might be attainable for grassland birds and, if applicable, the amount of mitigation funding that may be necessary if impacts will not be avoided or mitigated."

[REDACTED]

The facility site is within [REDACTED]. To avoid and minimize impacts to [REDACTED] project construction shall adhere to the Uniform Standards and Conditions (see [REDACTED]).

[REDACTED]

The facility site is not within [REDACTED] nor within [REDACTED] of a [REDACTED].

[REDACTED]

The proposed facility site is within [REDACTED] of a known [REDACTED]. The proposed project will not impact this listed species on condition that the Applicant implement the avoidance and minimization measures described in [REDACTED].

[REDACTED]

The proposed facility site overlaps with occupied habitat for [REDACTED] and [REDACTED]. ORES has determined that the Flat Creek Solar Project is estimated to adversely impact [REDACTED] acres of [REDACTED] of [REDACTED] for [REDACTED], and [REDACTED] of [REDACTED]. The Applicant shall avoid potential significant adverse impact(s) to these habitats to the maximum extent practicable. If the Applicant can demonstrate that full avoidance of potential significant adverse impact(s) to these habitats is not practicable, the Applicant is required to develop and submit a Net Conservation Benefit Plan (NCBP) to minimize or mitigate any remaining potential significant adverse impact(s) to these habitats for the proposed Facility. See 19 NYCRR [REDACTED].

[REDACTED]

To avoid and minimize impacts to [REDACTED], construction shall also adhere to the Uniform Standards and Conditions (see [REDACTED]). To avoid direct impacts to individual [REDACTED] during construction and to mitigate impacts to [REDACTED], the Applicant shall adhere to the Uniform Standards and Conditions (see [REDACTED]). Attachments A and B summarize the areas of potential occupied habitat taken within the proposed facility site and the amount of mitigation potentially required.

[REDACTED]

The following NYS [REDACTED] are confirmed to be present within the proposed facility site: [REDACTED]. Pursuant to [REDACTED] the Applicant shall identify and evaluate avoidance and minimization measures to be incorporated in the facility design, as well as any unavoidable potential impacts to these species.

—

Please note, this Determination of Occupied Habitat, Incidental Take and Net Conservation Benefit is subject to revision if the Facility design and layout is altered from the version presented

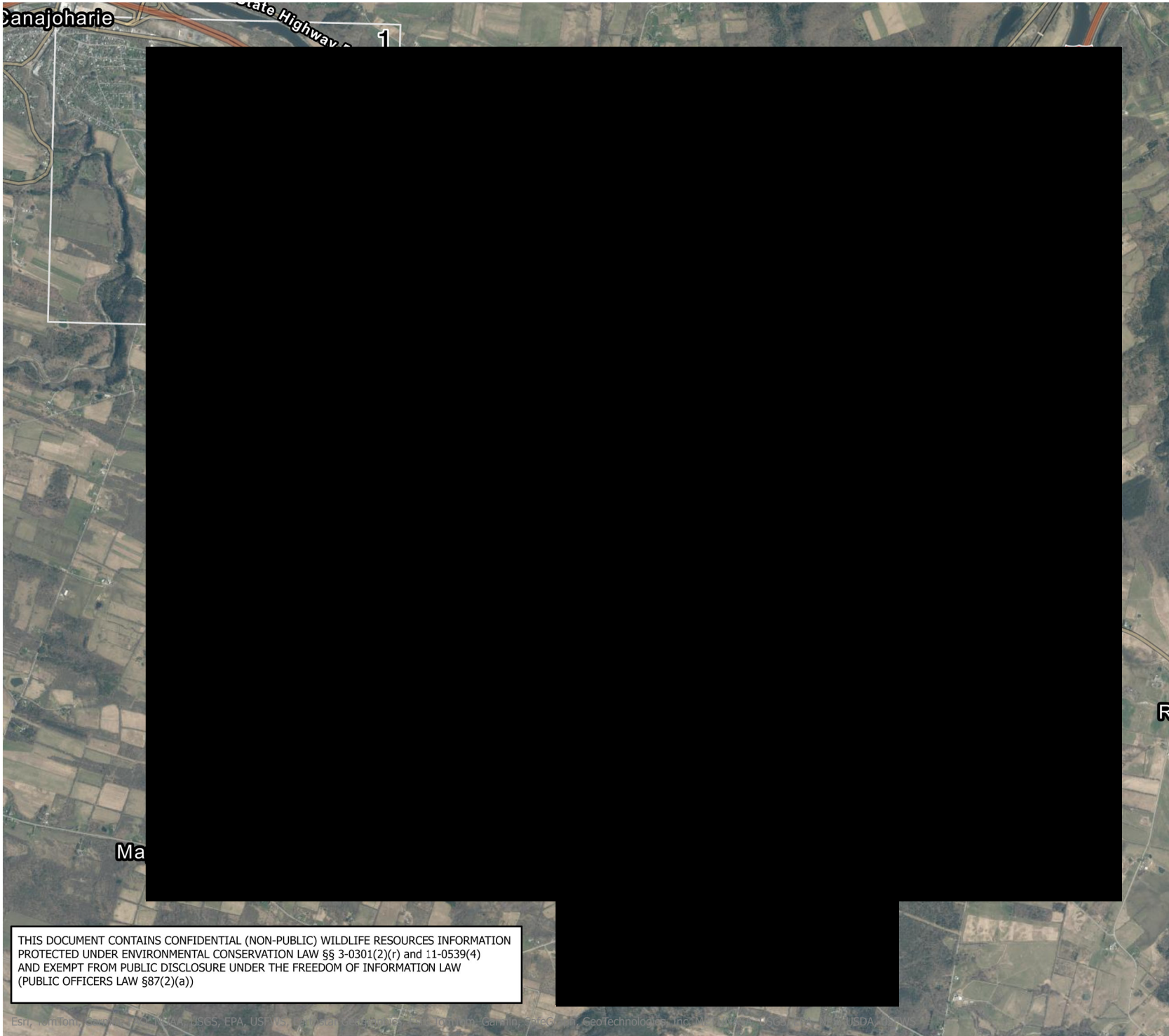
to the Office as of the date of this letter. In compliance with §900-1.3(g)(8), the Applicant shall provide the Wildlife Site Characterization Report, habitat assessment, and/or survey reports, and Net Conservation Benefit Plans as part of Exhibit 12 (§900-2.13) in support of an application to the Office for a major renewable energy facility.

As a reminder, the Applicant must also provide a written explanation of how the Facility design first avoids and then minimizes impacts to the identified NYS threatened or endangered or species of special concern to the maximum extent practicable. Unavoidable adverse impacts shall be summarized by species impacted and include an assessment of the acreage and/or an estimate number of individual members of each such species affected. See 19 NYCRR § 900-2.13(d).

Please note that the basis for the Office's draft determination regarding occupied habitat and potential take for this project only applies to major renewable energy facilities covered by Section 94-c of New York Executive Law. This determination is valid for a period of five years from the date of this letter. This determination may be subject to additional review if changes are made to the anticipated facility plan. Please contact the Office before an application is filed if any such changes are made, or additional pre-application consultation is required.

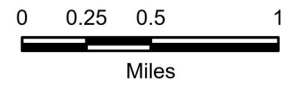
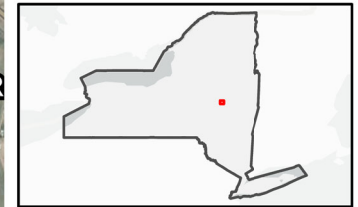
ATTACHMENT A – ORES TAKE DETERMINATION MAP

ATTACHMENT B – ORES OCCUPIED HABITAT FIELD BY FIELD ANALYSIS TABLE



Applicant Take Estimate - 240208

-  Fence Area
-  Substation Area
-  Access Road Area
-  Project Parcels

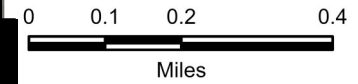
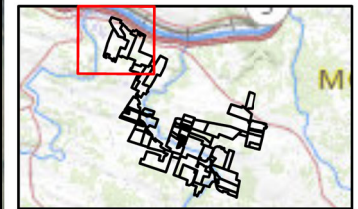


THIS DOCUMENT CONTAINS CONFIDENTIAL (NON-PUBLIC) WILDLIFE RESOURCES INFORMATION PROTECTED UNDER ENVIRONMENTAL CONSERVATION LAW §§ 3-0301(2)(r) and 11-0539(4) AND EXEMPT FROM PUBLIC DISCLOSURE UNDER THE FREEDOM OF INFORMATION LAW (PUBLIC OFFICERS LAW §87(2)(a))



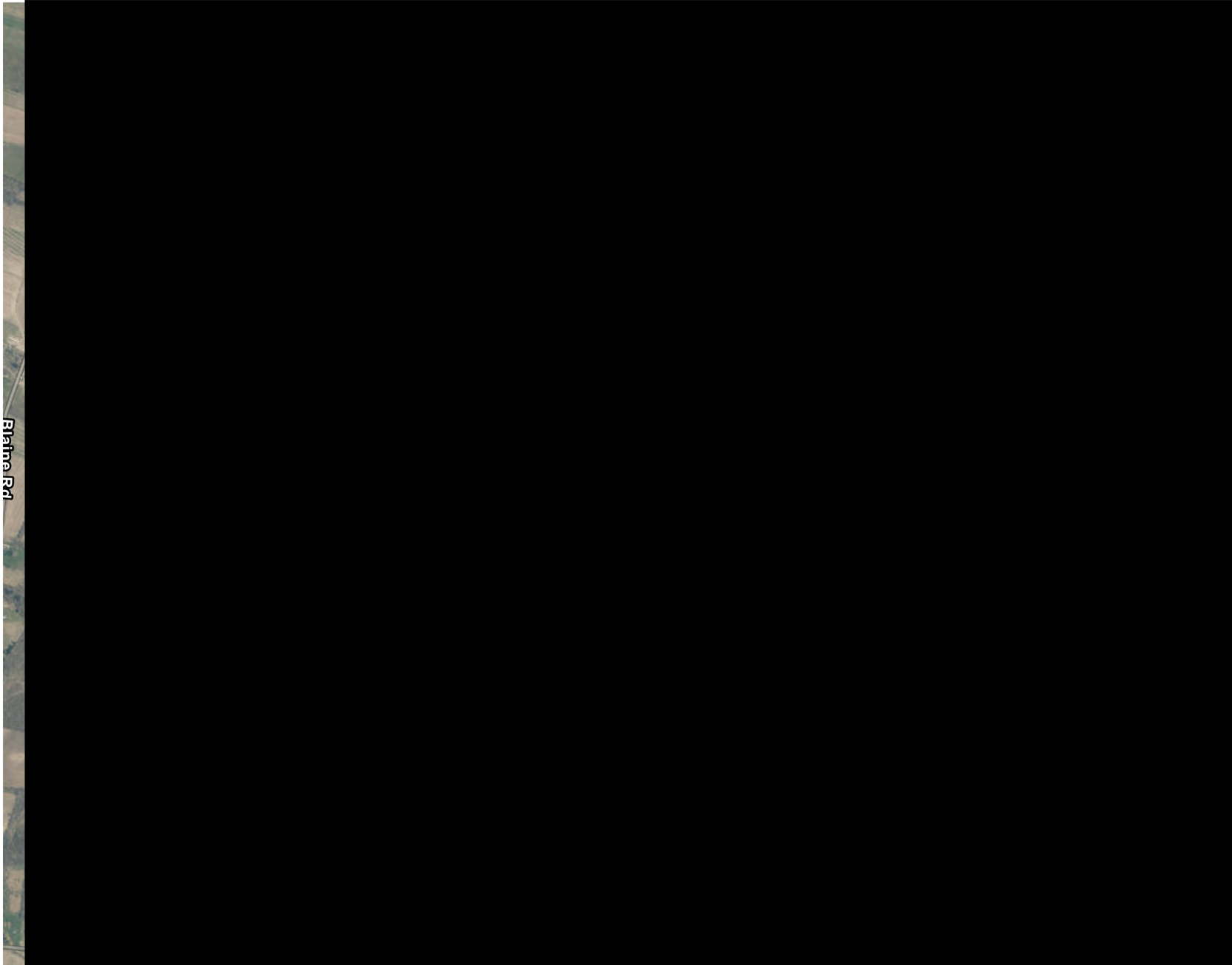


- Applicant Take Estimate - 240268
- Applicant Delineated Fields
- Fence Area
- Access Road Area
- Project Parcels



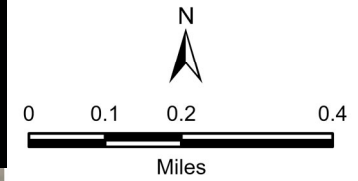
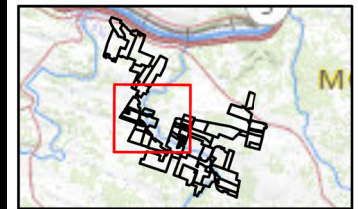
THIS DOCUMENT CONTAINS CONFIDENTIAL (NON-PUBLIC) WILDLIFE RESOURCES INFORMATION PROTECTED UNDER ENVIRONMENTAL CONSERVATION LAW §§ 3-0301(2)(r) and 11-0539(4) AND EXEMPT FROM PUBLIC DISCLOSURE UNDER THE FREEDOM OF INFORMATION LAW (PUBLIC OFFICERS LAW §87(2)(a))





Blaine Rd

- Applicant Take Estimate - 240208
- Applicant Delineated Fields
- Fence Area
- Substation Area
- Access Road Area
- Project Parcels



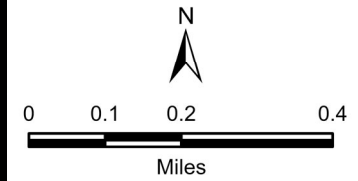
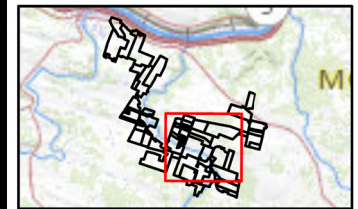
THIS DOCUMENT CONTAINS CONFIDENTIAL (NON-PUBLIC) WILDLIFE RESOURCES INFORMATION PROTECTED UNDER ENVIRONMENTAL CONSERVATION LAW §§ 3-0301(2)(r) and 11-0539(4) AND EXEMPT FROM PUBLIC DISCLOSURE UNDER THE FREEDOM OF INFORMATION LAW (PUBLIC OFFICERS LAW §87(2)(a))





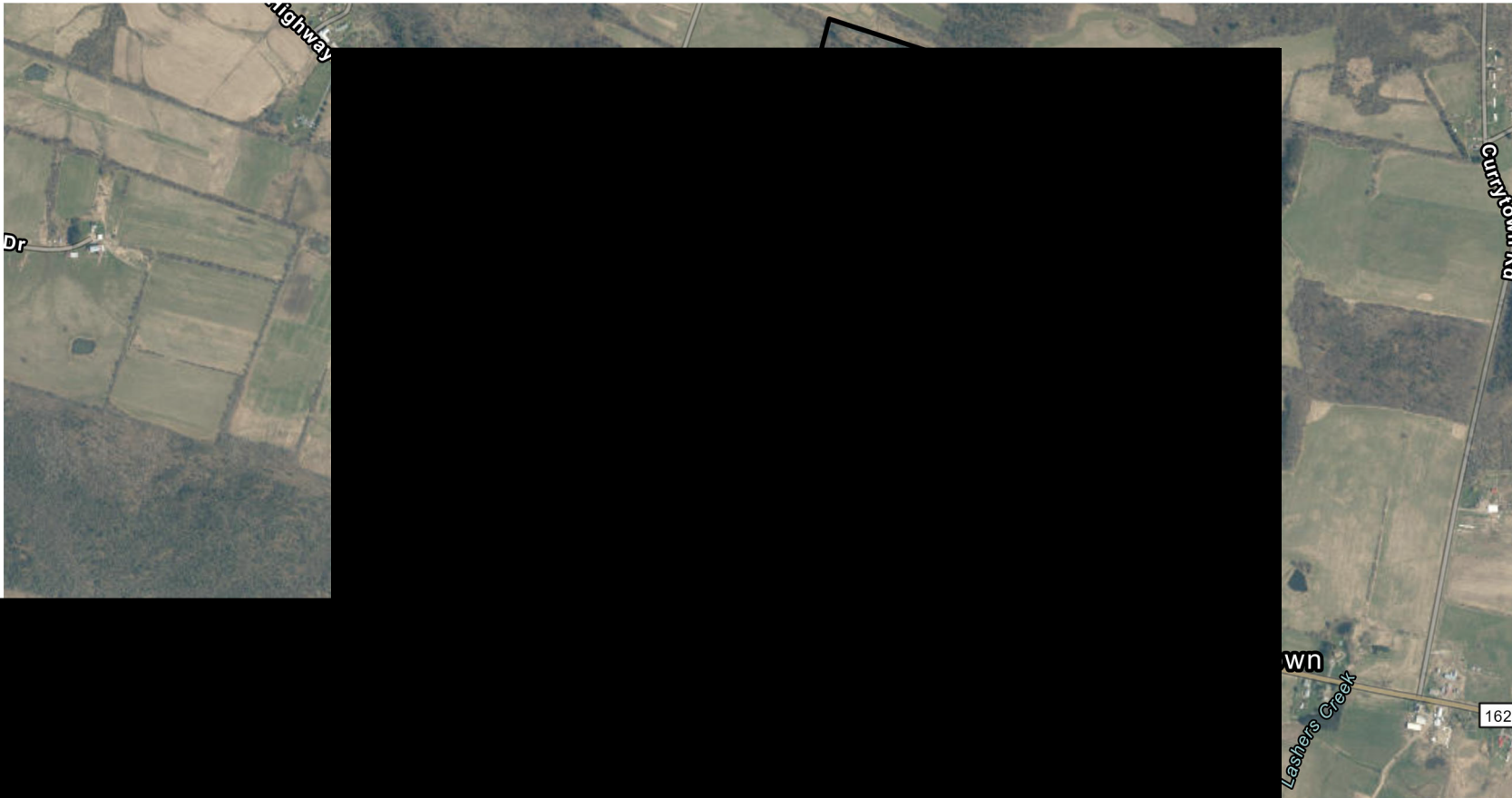
Applicant Take Estimate - 240268

-  Applicant Delineated Fields
-  Fence Area
-  Substation Area
-  Access Road Area
-  Project Parcels

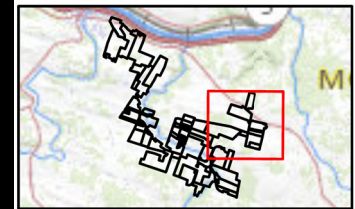


THIS DOCUMENT CONTAINS CONFIDENTIAL (NON-PUBLIC) WILDLIFE RESOURCES INFORMATION PROTECTED UNDER ENVIRONMENTAL CONSERVATION LAW §§ 3-0301(2)(r) and 11-0539(4) AND EXEMPT FROM PUBLIC DISCLOSURE UNDER THE FREEDOM OF INFORMATION LAW (PUBLIC OFFICERS LAW §87(2)(a))





- Applicant Take Estimate = 240208
- Applicant Delineated Fields
- Fence Area
- Access Road Area
- Project Parcels



0 0.1 0.2 0.4



Miles



THIS DOCUMENT CONTAINS CONFIDENTIAL (NON-PUBLIC) WILDLIFE RESOURCES INFORMATION PROTECTED UNDER ENVIRONMENTAL CONSERVATION LAW §§ 3-0301(2)(r) and 11-0539(4) AND EXEMPT FROM PUBLIC DISCLOSURE UNDER THE FREEDOM OF INFORMATION LAW (PUBLIC OFFICERS LAW §87(2)(a))



